

REMARKS / ARGUMENTS

The present application includes pending claims 1-25, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 6,032,194 issued to Gai et al. (hereinafter, Gai), in view of U.S. Patent Application Publication 2004/0047320, by Eglin, (hereinafter, Eglin), and U.S. Patent Publication No. 2006/0234678, by Juitt et al. (hereinafter Juitt). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See MPEP at § 2142. Further, MPEP § 2143.01(III) states that "the mere fact that references can be combined or modified does not render the resultant combination

obvious unless the results would have been predictable to one of ordinary skill in the art.” Moreover, MPEP § 2143.01(IV) also states that the level of ordinary skill in the art cannot be relied upon to show a *prima facie* case of obviousness. Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

I. The proposed combination of Gai, Eglin, and Juitt does not render claims 1-25 unpatentable

The Applicant now turns to the rejection of claims 1-25 as being unpatentable over Gai in view of Eglin and Juitt. The Applicant notes that the proposed combination of Gai, Eglin, and Juitt forms the basis for all of the pending rejections.

A. The proposed combination of Gai, Eglin, and Juitt does not render claim 1 obvious.

The Applicant first turns to the rejection of claim 1. Initially, the Applicant notes that the reasons for rejection set forth by the Office Action are essentially identical to those used in the Final Office Action mailed on June 25, 2007. In response to that Final Office Action, the Applicant filed a Pre-Appeal Brief Request for Review, and was successful in having prosecution reopened. However, only

one reference to a passage in Juitt has been added in support of the rejection of independent claims 1, 9, and 17 after prosecution was reopened. All the remaining reasons and references for rejection of claims 1, 9, and 17 remain unchanged. Presumably, therefore, the Examiner is relying on Juitt to overcome the deficiencies found by the panel to exist in the combination of Gai and Eglin. For this reason, the Applicant restates the arguments made with respect to the unchanged references from Gai, and Eglin, with further elaborations, as appropriate.

B. The proposed combination does not disclose the claim limitation “determining at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port”

The Applicant maintains that the combination of Gai, Eglin, and Juitt does not disclose at least the limitation of “determining at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port,” as recited by the Applicant in independent claim 1. More specifically, Gai does not teach “determining at least one available switch port having a capability to handle first local area network.”

The Office Action refers for support in Gai, col.7, lines 20-30, to the following:

Network 100 further includes a plurality of servers 112a-112c, such as file servers, print servers, etc., each coupled to the local port 118 of one or more access or backbone switches. Each LAN 102-109 includes one or more hosts or end stations (not shown) that may source or sink data frames to one another or to the servers 112a-112c

over the network 100. One or more routers 130 and 131 may also be provided to add functionality to network 100. Preferably, each router 130, 131 is coupled to a backbone switch, such as backbone switches 120 and 121, by a corresponding link 128.

The Applicant submits that the above paragraph from Gai referenced in the Office Action does not indicate or suggest that Gai teach any part of "determining at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port." Based on the above paragraph, Gai simply describes a network topology. The mere fact of referring to a LAN that "may source or sink data frames to one another or to the servers" does in no way imply "a capability to handle first local area network" as recited by the Applicant. Furthermore, there is no suggestion that Gai discloses, whether implicitly or explicitly, the Applicant's claimed limitation of "determining at least one available switch." The Office Action further states that the above passage supports "if the port is active and able to serve; if not a backup can be used." The Applicant contends that there is no support for any part of this statement in the cited passage. If the examiner is in possession of such support, the Applicant respectfully requests that the Examiner provide that support to the Applicant.

Furthermore, the Office Action refers for support to Gai et al, col. 10, lines 49-67 and col. 11, 1-15. Gai discloses at col. 10, lines 49-53, the restriction, "For all LANs coupled to both an access switch and a backbone switch, operation of the above commands 300, 320, 330 also results in the respective backbone switch becoming the designated switch, rather than the access switch." The Office

Action, however, does not provide any basis for why this passage is relevant to "determining at least one available switch port having a capability to handle a first local area network." Accordingly, the Applicant respectfully submits that the rejection be withdrawn.

The Examiner further refers to col. 11, line 8-15 and lines 41-44 in Gai to stipulate that "said first local area network having a first default switch" in the Applicant's limitation is unpatentable over Gai. The applicant points out that no mention of a local area network is made in the cited passage. Hence, the applicant fails to see the applicability of this passage.

Additionally, the Examiner states in the Office Action (page 4) that Gai does not specifically disclose a hybrid wired/wireless local area network, as called for in independent claim 1 by the Applicant. The Applicant respectfully agrees.

The Applicant therefore, respectfully submits that Gai, alone or in combination with Eglin, cannot teach, nor suggest "determining at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port," such as recited in claim 1.

Moreover, the Office Action states that Gai as modified by Eglin fails to "specifically disclose that the hosts, having the capability to source and sink data, which are part of the WLAN are actually a group of access points." Further, the Office Action states that Juitt discloses "a method for managing data traffic in wireless networks wherein a WLAN comprising a group of access points is

connected to a port which can be transferred if a fault occurs.” For support, the Office Action refers to Juitt, FIG. 1A and FIG. 7 - Abstract; Page 3, Paragraph 0023; Page 9, Paragraph 0081; Page 12, Claim 44. Without conceding that Juitt qualifies as prior art to the present application, the Applicant will address the Examiner’s reliance on Juitt.

First, the Applicant notes that Juitt was filed on March 8, 2006 as a continuation of U.S. Patent 7,042,988 by Juitt et al. (herein Juitt-Parent), filed on September 27, 2002. Hence Juitt relies on Juitt-Parent’s filing date to qualify as prior art (if it qualifies as prior art at all). While Juitt reproduces FIG. 1A and FIG. 7 - Abstract; Page 3, Paragraph 0023; Page 9, Paragraph 0081 identically from Juitt-Parent, Claim 44 in Juitt is not identical to similar claims in Juitt-Parent.

Second, in contrast to the Office Action that states “a WLAN comprising a group of access points,” FIG. 1A and FIG. 7 do depict Access Points that are not comprised in WLAN 105. The Abstract, and the cited paragraphs; Page 3, Paragraph 0023; Page 9, Paragraph 0081; and Claim 44 in Juitt do not support “WLAN comprising a group of access points” as stated in the Office Action.

Moreover, the Office Action states that “group of access points is connected to a port which can be transferred if a fault occurs.” The Office Action refers for support to Juitt, FIG. 1A and FIG. 7 - Abstract; Page 3, Paragraph 0023; Page 9, Paragraph 0081, and Claim 44. As illustrated in FIG. 1A, FIG. 7, and described in paragraph 0023, 0081 and Claim 44, Juitt states that **gateway servers** are

connected to the fail-over port 900/interface, and **not access points** as stated in the Office Action on page 4. Furthermore, paragraph 0023 and paragraph 0081 state that when "a fall-over occurs and one of the back-up servers takes over," a switching of the gateway servers occurs. In Juitt's Claim 44, no mention is made of any actions that may take place in case of fault. Moreover, as stated above, no mention of "transferring a port" is made, contrary to the statement in Office Action. Therefore, in summary, Juitt discloses switching of **gateway servers** and not of **ports**, as claimed in the Office Action on page 4, and the ports (which are not switched) are not connected to access points.

Thus, there is no reference to switch **ports** that provide service to a first access point group, as claimed in the Applicant's claim limitation. Since the statement in the Office Action, pages 4-5, regarding Juitt as shown above is not supported by Juitt, the Applicant contends that the statement does not read on the Applicant's claim limitation. Specifically, even if the Office Action statement regarding Juitt was supported in Juitt, which the applicant respectfully submits that it is not, the Applicant fails to see how it is relevant to the Applicant's claim 1. The Applicant refers to MPEP §2142 which requires that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

Moreover, the Applicant further notes that the Office Action has not made

an attempt at a “functional approach” using, for example, the *Graham* factors to make the obviousness rejection explicit, as required under MPEP §2143.

Accordingly, the proposed combination of Gai, Eglin, and Juitt does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable.

Independent claims 9 and 17 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 9 and 17 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-8, 10-16 and 18-25

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 9 and 17 under 35 U.S.C. § 103(a) as being anticipated by Gai in view of Eglin, and Juitt has been overcome and request that the rejection be withdrawn. Additionally, claims 2-8, 10-16 and 18-25 depend from independent claims 1, 9 and 17, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-25.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-25 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Attorney at (312) 775-8105.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: April 22, 2008

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